



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

California State Office
2800 Cottage Way, Suite W1834
Sacramento, California 95825-1886
www.ca.blm.gov

In Reply Refer To:
6840(P)
CA-930

JUL 13 1999

Memorandum

To: Manager, California-Nevada Operations **Office**, U.S. Fish and Wildlife Service
Regional Director, Region 1, U.S. Fish and Wildlife Service

From: State Director, California

Subject: Suggested Framework for Conducting Section 7 Consultations on the Land Use Plans Administered by Our Six Northern California Field Offices

The Bureau of Land Management (**BLM**) is currently reviewing its Section 7 compliance responsibilities with respect to several Northern and Central California land use plans. Seventeen Resource Management Plans (**RMPs**) and Management Framework Plans (**MFPs**) will soon be amended to reflect the management direction set forth in the Record of Decision for ***Rangeland Health Standards and Guidelines for California and Northwestern Nevada***. Upon the effective date of this Record of Decision, the Standards and Guidelines will supersede any existing land use plan decisions that are in conflict with the Standards and Guidelines (i.e. any existing land use decisions that are less stringent than the Standards and Guidelines will be replaced by the management direction set forth in the Standards and Guidelines).

As soon as this land use amendment process has been completed (i.e. after all protests and appeals involving the ***Rangeland Health*** Standards and Guidelines have been resolved and the Secretary approves the implementation of the Record of Decision), the affected BLM field offices will consult formally or informally, as appropriate, per ~~the~~ guidelines in 50 CFR Part 402. In some cases, the exception provided by 50 CFR 402.14(b) may be applicable because BLM will merely be increasing the level of protection provided to listed species by amending a plan that was subject to a previous Section 7 consultation. In other cases, the plan being amended by the ***Rangeland Health Standards*** and Guidelines may not be covered by an earlier biological opinion, or additional species may have been listed since the earlier consultation was completed. Pursuant to the guidance given in the ***Pacific Rivers Council v. Thomas*** decision of the Ninth Circuit Court, we will be consulting on those plans that exceed the "may affect" threshold for listed threatened or endangered species.

The BLM field offices that will be implementing the ***Rangeland Health*** Record of Decision are shown in Attachment 1. Our Northern California (**NORCAL**) field office managers recently met to develop a recommended approach for consulting on the plans they administer. Their

recommended approach is for each BLM field office to initiate a separate consultation with the Fish and Wildlife Service (**FWS**) office shown below on the plan or plans within their jurisdiction that involve federally listed species. In consideration of our prior working relationships with personnel from your different California and Oregon field offices, we propose to initiate consultation on these plans as follows:

1. Our Alturas Field Office will consult with the Klamath Lake Field Office of FWS. The principal BLM staff contact for our consultations on the Alturas RMP, Mt. Dome MFP, and Cinder Cone MFP is Jennifer Purvine (**530-233-4666**).
2. Our Eagle Lake Field **Office** will consult with the Sacramento Field **Office** of FWS. The principal BLM staff contact for our consultations on the Cal-Neva MFP, Willow Creek MFP, and Honey Lake-Be&worth MFP is Don Armentrout (530-257-0456).
3. Our **Redding** Field Office will consult with the Red Bluff Field Office of FWS. The principal BLM staff contact for our consultation on the **Redding RMP** is Keith Hughes (530-224-2132).
4. Our Surprise Field Office will consult with the Portland Field Office of FWS. The principal BLM staff contact for our consultations on the Tuledad-Homecamp MFP and **Cowhead-Massacre** MFP, which concern listed and proposed species only in the Warner Basin, is Roger Farschon (530-279-6101).
5. Our Ukiah Field Office will consult with the Sacramento Field Office of FWS. The principal BLM staff contact for our consultation on the Clear Lake MFP is Gregg Mangan (707-468-4078).
6. Our Arcata Field Office recently concluded formal consultation, both with FWS and the National Marine Fisheries Service, on the two land use plans that cover their administrative area (Arcata RMP and Ring Range Management Plan). The biological opinions on those plans are still current with respect to Section 7 compliance. Paul Roush, who works out of the Arcata Field Office, is **BLM's** Section 7 coordinator for all six **NORCAL** field offices. He may be reached at 707-825-2313 if you have questions or need more information regarding the consultations on any of the **NORCAL** land use plans.

Some **NORCAL** field offices have scheduled, or have already held, preconsultation ("level 1") meetings with the indicated FWS field offices for the purpose of scoping and preliminary issue identification. The purpose of these "level 1" meetings is to brief key staff on the scope and content of **BLM's** land use plans, provide maps, review species records within the plan area boundaries, make preliminary determinations of effect, obtain concurrence on the information needed to complete the consultations, and develop mutually acceptable schedules for initiating and completing formal consultation on the different land use plans.

In view of the Notice of Intent to Sue that has been served on the Secretary (see Attachment **2**), we are seekii to develop the most expeditious framework possible for consulting on our land use plans. The Notice of Intent to Sue alleges BLM is not in compliance with Section 7 of the ESA

for "... **failure** to consult and/or re-consult and illegal take of listed species on BLM Districts, Resource Areas and other management units in the State of California." The NO1 specifically addresses, "BLM Resource Management Plans, Grazing **EIS's**, Allotment Management Plans, Management Framework Plans and other instruments of BLM decision making. "

Because the geographical areas covered by these plans overlap with the administrative boundaries of several FWS Field Offices, we are requesting your input and assistance in developing an efficient framework for conducting the required Section 7 consultations. We would appreciate your prompt review of our suggested framework for consulting on our **NORCAL** land use plans and timely feedback on how we should modify our recommended approach if you have alternate views concerning the proposed lead FWS field offices.

As soon as we have developed a mutually agreeable approach for conducting the **NORCAL** Section 7 consultations, our four Central California field offices will begin reviewing the land use plans they administer for the purpose of achieving Section 7 currency on the Bishop RMP, Caliente RMP, Hollister RMP, Inimim Forest Plan, and Sierra MFP.

Technical questions regarding this issue may be directed to Paul Roush, **NORCAL** Section 7 coordinator, at 707-825-2313 or to Ed **Lorentzen** in the California State Office at 916-978-4646. I may be reached at **916-978-4600** if you would like to discuss this matter further.

Elaine Marguis Brong
Acting

Attachments
As Stated

cc: Field Supervisor, Arcata Field Office, USFWS (w/attachments)
Field Supervisor, Klamath Falls Field Office, USFWS (w/attachments)
Field Supervisor, Portland Field Office, USFWS (w/attachments)
Field Supervisor, Red Bluff Field Office, USFWS (w/attachments)
Field Supervisor, Reno Field Office, USFWS (w/attachments)
Field Supervisor, Sacramento Field Office, USFWS (w/attachments)
Field Supervisor, Ventura Field Office, USFWS (w/attachments)
Field Supervisor, Yreka Field Office, USFWS (w/attachments)
CA-320 (w/attachment 1 only)
CA-330 (w/attachment 1 only)
CA-340 (w/attachment 1 only)
CA-350 (w/attachment 1 only)
CA-360 (w/attachment 1 only)
CA-370 (w/attachment 1 only)
CA-160 (w/attachment 1 only)
CA-170 (w/attachment 1 only)
CA-180 (w/attachment 1 only)
CA-190 (w/attachment 1 only)

BLM Field Offices and Land Use Plans Administered - Northern & Central California

BLM Field Office

Land Use Plan(s) Administered

NORCAL OFFICES

Alturas Field Office

Alturas RMP
Mt. Dome MFP
Cinder Cone MFP

Arcata Field **Office**

Arcata RMP
King Range Management Plan

Eagle Lake Field **Office**

Cal-Neva MFP
Willow Creek MFP
Honey Lake-Be&worth MFP

Redding Field **Office**

Redding RMP

Surprise Field Office

Tuledad-Homecamp MFP
Cowhead-Massacre MFP

Ukiah Field Office

Clear Lake **MFP**

CENTRAL CALIFORNIA OFFICES

Bakersfield Field **Office**

Caliente RMP

Bishop Field **Office**

Bishop RMP

Folsom Field Office

Sierra MFP
Inimim Forest Plan

Hollister Field Office

Hollister RMP

Southwest Center for Biological Diversity

protecting and restoring the southwest's deserts, rivers, forests, and wildlife



Sent Via Fax & Certified Mail

February, 27.1999

Bruce Babbitt
Secretary of Interior
U.S. Department of Interior
18th and C Street NW Room 5660
Washington, DC 20240

Director
Bureau of Land Management
1849 C. St NW
Washington, DC 20240

Director
BLM-California State Office
2135 Butano Drive
Sacramento, CA 95825

RE: Sixty-Day Notice of Intent to Sue under Endangered Species Act regarding failure to consult and/or re-consult and illegal take of listed species on BLM Districts, Resource Areas and other management units in the State of California.

The Southwest Center for Biological Diversity and the Center for Biological Diversity are writing to inform you that you and your agencies are in violation of the Endangered Species Act (ESA), 16 U.S.C. 1531-1534, by continuing to allow activities including but not limited to; livestock grazing, logging, road-building and maintenance, off-road vehicle use, water diversions, border patrol-control activities, special use permits, land exchanges, mining and facilities on BLM Districts in the State of California without the necessary programmatic and/or site specific section 7 ESA formal consultations to determine the effects of such continued activities on threatened and endangered species and their critical habitats. We are also writing to inform you that the above activities which are continuing without the proper ESA section 7 consultations are also causing unpermitted take of listed species in violation of section 9 of the ESA. This letter is being provided to you pursuant to the sixty-day notice requirement of the citizen suit provision of the ESA, 16 U.S.C. 1540(g)(2).

BLM Resource Management Plans, Grazing EIS's, Allotment Management Plans, Management Framework Plans (MFP's) and other instruments of BLM decision making have never been through either the ESA Section 7 consultation process or new species have been listed since previous consultations and section 7 consultation and has not been reinitiated. Numerous BLM authorized or permitted activities affecting these species have not been through either or both the programmatic and site-specific consultation process and unpermitted take of listed species is currently occurring. BLM Districts statewide are in violation of the Endangered Species Act.

The BLM is also in violation of Section 9 of the ESA, 16 U.S.C., 1538 by allowing continued activities absent formal programmatic and/or site specific consultation and/or re-consultation on the RMP's, Grazing EIS's, permits, and other instruments of BLM decision-making which are "taking" those threatened and endangered species present or impacted. "Taking" of a threatened or endangered species includes killing, harming or harassing them. 16 U.S.C. 1532(19). "Harming" a threatened or endangered species includes killing or injuring it which includes "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. "50 C.F.R. 17.3: "Harassing" a threatened or endangered species is an act which "creates a likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns behavioral patterns..."ID. Such "taking" will continue to occur as a result of destructive activities taking place on BLM Districts and Resource Areas in California.

Examples of BLM site-specific activities which must be consulted/reconsulted upon include but are not limited to:

In-Ko-Pah and Mount Tule grazing allotments- Peninsular Bighorn Sheep
McCain Valley Recreation Area- Peninsular Bighorn Sheep
Dunn Road Jeep Tours- Peninsular Bighorn Sheep

Examples of BLM programmatic plans/activities which must be consulted/reconsulted upon include but are not limited to:

South Coast RMP
Eastern San Diego MFP
McCain Valley
Alturas RMP
Mt. Dome MFP
Cinder Cone MFP
Arcata RMP
Cal-Nev MFP
Willow Creek MFP
Honey Lake-Beckworth MFP
Redding RMP
Tulead-Homocamp RMP
Cowhead-Massacre MFP
Alturas RMP
Clear Lake MFP
Bishop RMP
Caliente RMP
Sierra MFP
Inimin Forest Plan

Hollister RMP
CDCA Plan

The federally listed threatened and endangered species involved may include but are not limited to:

Peninsular Bighorn Sheep
Desert Tortoise
Lane Mountain Milk-Vetch
San Diego Thornmint
Munz's Onion
McDonald's Rock-Cress
Morro Manzanita
Ione Manzanita
Cushenberry Milk-Vetch
Braunton's Milk-Vetch
Coachella Valley Milk-Vetch
Fish Slough Milk-Vetch
Peirson's Milk-Vetch
Triple-Ribbed Milk-Vetch
San Jacinto Saltbush
Nevin's Barberrry
Thread-Leaved Brodiaea
San Benito Evening-Primrose
Succulent Owl's Clover
California Jewelflower
Coyote Ceanothus
Pine Hill Ceanothus
Spring-Loving Centaury
Hoover's Spurge
Howell's Spineflower
Orcutt's Spineflower
Monterey Spineflower
Chorro Creek Bog Thistle
Springville Clarkia
Slender-Horned Spineflower
Santa Monica Mtns. Dudleya
Kern Mallow
Santa Ana River Woollystar
Hoover's Woollystar
Parish's Daisy
Indian Knob Mountainbalm
Ione Buckwheat
Cushenberry Buckwheat
Humboldt Bay Wallflower
Pine Hill Flannelbush
Mexican Fremontia
El Dorado Bedstraw
Sand Gilia
Ash Meadows Gum Plant
Water Howellia

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Contra Costa Goldfields
Beach Layia
San Joaquin Woolly Threads
Butte County Meadowfoam
Cuyamaca Meadowfoam
Amargosa Nitewort
Bakersfield Cactus
California Orcutt Grass
San Joaquin Valley Orcutt Grass
Hairy Orcutt Grass
Slender Orcutt Grass
Cushenberry Oxytheca
Yreka Phlox
Olay Mesa Mint
Hartweg's Pseudobahia
Tulare Pseudobahia
Layne's Butterweed
Metcalf Canyon Jewel-Flower
Greene's Orcutt Grass
Red Hills Vervai
Southwestern Willow Flycatcher
Bald Eagle
Peregrine Falcon
Northern Spotted Owl
Marbled Murrelet
Arroyo Toad
California Red-Legged Frog
San Joaquin Kit Fox
San Bernadino Kangaroo Rat
Giant Kangaroo Rat
California Brown Pelican
California Gnatcatcher
California Condor

Based on the above information both the BLM and the Secretary of Interior are in violation of the ESA by failing to ensure through formal consultation with the U.S. Fish and Wildlife Service that the continued activities on BLM lands in California are not likely to jeopardize the continued existence of the threatened and endangered species affected or result in the adverse modification of their critical habitats. The BLM is further in violation of the ESA because continued destructive activities occurring on these lands is resulting in a "take" of the species mentioned and other listed and proposed threatened and endangered species.

If satisfactory steps are not taken to remedy these violations within the next sixty days, we intend to pursue appropriate legal action. Please contact me if you have any questions or would like to discuss this matter.

Thank you for your prompt attention.

Sincerely,


Peter Galvin



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

California State Office
2135 Butano Drive
Sacramento, California 95825-0451

MAY 0 5 1999

In Reply Refer To:
6840(P)
CA-930

Peter Galvin
Southwest Center for Biological Diversity
P.O. Box 710
Tucson, Arizona 85702

Subject: Your **60-Day** Notice of Intent to Sue **Concerning** Alleged Violations of Section 7 of the Endangered Species Act

Dear Mr. Galvin:

This letter responds to your February 27, 1999, notice of intent to sue concerning alleged violations of section 7 of the Endangered Species Act (**ESA**). We have carefully reviewed the **issues raised in your notice and are** providing you with a status update on each of the areas where **you have** asserted we are not in compliance with the ESA.

Issues **#1**. You assert BLM is in violation of the **ESA** by "... continuing to allow activities including but not limited to, livestock grazing, logging, road-building and maintenance, off-road vehicle use, water diversions, border patrol-control activities, special use permits, land exchanges, mining and facilities on BLM Districts in the State of California without the necessary programmatic and/or site specific section 7 ESA formal consultations to determine the effects of such continued activities on threatened and endangered species and their critical habitats. "

BLM Response: BLM field offices carefully review all discretionary actions to ensure compliance with the ESA and other applicable laws and regulations. Any action that would be authorized, **funded**, or carried out by BLM is reviewed for potential effects to listed or proposed threatened and endangered species. Proposed actions that exceed the "may affect" threshold are submitted to the Fish and Wildlife Service (**FWS**) or National Marine Fisheries Service (**NMFS**) for their review per the interagency consultation procedures prescribed in 50 CFR Part 402. Of the four site-specific activities mentioned in your notice as being deficient with respect to section 7 **of the** ESA, we are consulting on one (Dunn Road Jeep Tours) and -- based on our current knowledge of the distribution and life history of the Peninsular Ranges bighorn sheep -- have determined that the other three (In-Ko-Pah grazing, Mount Tule grazing, and **McCain** Valley

recreation) do not exceed the may affect threshold.’ The biological opinion for Dunn Road Jeep Tours is overdue and is expected at any time. Documentation is available in our files for the hundreds of formal and informal consultations we have conducted with FWS and NMFS since 1978 concerning BLM activities that exceed the “may affect” threshold.

Issues #2. You assert “ . . . the above activities which are continuing without the proper ESA section consultations are also causing unpermitted take of listed species in violation of section 9 of the ESA. ”

BLM Response: Your notice does not cite any specific instances of documented unauthorized take in relation to a project authorized, funded, or carried out by BLM in California. We are not aware of any unauthorized take of a threatened or endangered species that has **occurred** in relation to a project authorized, funded, or carried out by BLM in California and we are actively monitoring our ongoing programs and activities in an effort to prevent that from happening.

Issues #3. You assert that “BLM Resource Management Plans, Grazing EIS’s, Allotment Management Plans, Management Framework Plans (MFPs) and other instruments of BLM decision making have never been through either the ESA Section 7 consultation process or new species have been listed since previous consultations and section 7 consultation has not been reinitiated.”

BLM Response: Our priorities for **ensuring** section 7 compliance at the plan level are to amend land use plans as needed to address the conservation needs of threatened and endangered species and then complete section 7 consultations on the amended plans. **Maintaining up-to-date** plans and achieving currency with respect to section 7 of the ESA on such plans has been challenging for BLM in California, as more than 30 California species, on average, have been added to the Federal List of Endangered and Threatened Wildlife each year for the past five years. This pace of new listings has exceeded our capability to update our plans as rapidly as needed to keep them current as well as our capability to complete timely consultations with FWS or NMFS on the updated plans. Through our budgetary process, we are attempting to secure the funding and personnel needed to update our land use plans and to complete section 7 consultations on all plans that exceed the may affect threshold.

Of the 21 BLM plans listed in your notice, we have completed section 7 consultations on the following: Arcata Resource Management Plan (RMP), Caliente RMP, Clear Lake MFP, Hollister RMP (**oil &** gas element), **Redding** RMP, and South Coast RMP. Reinitiation of consultation is in order for some of these plans because additional species have been listed since the biological opinions were issued. Several of the plans you listed are outside the known range of listed species or do not reach the “may affect” threshold.

¹**A** habitat boundary map is now **being** prepared by an interagency working group that is developing a draft recovery plan for the Peninsular Ranges population of bighorn sheep. Once that map is completed and distributed by **FWS** to cooperating agencies, BLM will re-evaluate all discretionary activities that overlap **with this** range map to determine whether consultation with FWS is appropriate.

All of our land use plans will be amended in the not too distant future to reflect the management changes being developed through our implementation of ***Rangeland Health Standards and Guidelines for California and Northwestern Nevada***, and through the ongoing bioregional planning efforts in the California Desert to implement recommended desert tortoise recovery plan tasks. We have, and are continuing, to consult informally with FWS and NMFS on ***Rangeland Health Standards and Guidelines*** and with FWS on the coordinated management plans being developed for the West Mojave Desert, Northern and Eastern Mojave Desert, and Northern and Eastern Colorado Desert. We will initiate formal consultation **with** FWS and/or NMFS, as appropriate, on those plans that affect threatened and endangered species as soon as the plan amendments have been developed.

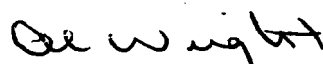
BLM's Northern California (**NORCAL**) field office managers recently met with FWS staff to develop an expeditious framework for consulting on the land use plans administered by our six **NORCAL** Field Offices. The **NORCAL** plans that will be amended to reflect the management direction given in the Record of Decision for ***Rangeland Health Standards and Guidelines for California and Northwestern Nevada***, and that will be the subject of formal or informal consultation with FWS, include the Alturas RMP, Arcata RMP, Cal-Neva **MFP**, Cinder Cone **MFP**, Clear Lake MFP, Cowhead-Massacre MFP, Honey Lake-Be&worth MFP, Ring Range Management Plan, Mt. Dome MFP, **Redding** RMP, **Tuleadad-Homecamp** MFP, and Willow Creek MFP. The consultations on these plans will consider the amendments related to ***Rangeland Health Standard& and Guidelines as well as the*** other management direction given in the plans.

Our four central California Field **Offices** will be following a similar process for initiating and completing section 7 consultation on the land use plans they administer **that** involve threatened or endangered species. The Central California plans **that** will be amended to reflect the management direction given in **the** Record of Decision for ***Rangeland Health Standards and Guidelines*** include the Bishop RMP, Caliente RMP, Sierra MFP, Inimim Forest Plan, and Hollister RMP.

Our priority in fulfilling our ESA responsibilities has **always** been to use our limited funds and personnel in a manner that will achieve the greatest on-the-ground results. In view of our regular and continuing coordination with FWS and NMFS in developing amendments to our land use plans, and in conducting the many formal and informal consultations we have completed over the past twenty years, we believe we are fulfilling our responsibilities under Section 7(a)(2) of the ESA in the most **efficient** and complete manner that our funding and personnel constraints allow.

I may be reached at **916-978-4600** if you would like to engage in further discussion of the issues presented in your notice.

Sincerely,



Al Wright
Acting State Director

cc: Office of the Secretary, **MIB**, RM 7229

Pacific Southwest Regional Solicitor, Sacramento, CA (Attn: John Payne)

Manager, California-Nevada Operations Office, USFWS, Sacramento, CA 9582505509

Regional Administrator, NMFS, Southwest Region, Long Beach, CA 908024213

Assistant Director, Renewable Resources & Planning (**WO-200**), RM 204, LS

Field Manager, Bakersfield Field **Office** (CA-160)

Field Manager, Bishop Field **Office** (CA-170)

Field Manager, Folsom Field Office (CA-180)

Field Manager, Hollister Field Office (CA-190)

Field Manager, Alturas Field Office (CA-320)

Field Manager, **Arcata** Field Office (CA-330)

Field Manager, Ukiah Field Office (CA-340)

Field Manager, Eagle Lake Field Office (CA-350)

Field Manager, **Redding** Field Office (CA-360)

Field Manager, Surprise Field Office (CA-370)

Field Manager, Ridgecrest Field **Office** (CA-650)

Field Manager, Palm Springs-South Coast Field Office (CA-660)

Field Manager, El Centro Field **Office** (CA-670)

Field Manager, **Barstow** Field Office (CA-680)

Field Manager, Needles Field Office (CA-690)

District Manager, California Desert District (CA-610)